

Response to Restriction Requirement (with Traverse)
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Dated: March 25, 2009
Electronic Signature for Kristin L. Murphy: /Kristin L. Murphy/

Docket No.: 66967-0033
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Arne Berger et al.

Application No.: 10/562,662

Confirmation No.: 3945

Filed: December 19, 2006

Art Unit: 3679

For: LONGITUDINAL PLUNGING UNIT WITH
CAGE SECURING MEANS

Examiner: G. J. Binda

RESPONSE TO RESTRICTION REQUIREMENT

MS Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Madam:

In response to the restriction requirement set forth in the Office Action mailed February 25, 2009 (Paper No. 20090219), applicant hereby provisionally elects claims 1, 11-17, 26-29 and 32 for continued examination, with traverse.

The Examiner has required restriction between the following species:

Species I, shown in Figs. 1 & 2 – claims 1, 11-17, 26-29 & 32;

Species II, shown in Fig. 3 – claims 1, 11-13, 15-21, 26-30 & 32; and

Species III, shown in Fig. 4 – claims 1, 11-13, 15-17, 22-29, 31 & 32.

Based on review of the claims, Applicants elect Species I, with traverse. Claims 1, 11-17, 26-29 and 32 read on the elected species and are selected explicitly for examination.

As recognized by the Examiner, this application is a National Phase of a PCT application filed under 35 U.S.C. § 371, and is not an application filed under 35 USC § 111(a). Unity of invention is applicable in international applications and in national stage (filed under 35 U.S.C. §371) applications under PCT Rule 13 and 37 CFR § 1.475. Thus, restriction requirements are governed under the Unity of Invention standards, and the Examiner must clearly specify why the claims directed to different groups of inventions lack a common special technical feature. Indeed, under the applicable rules Unity of Invention exists when claims are directed to a common special technical feature.

MPEP §1893.03(d) explains that a group of inventions is considered linked to form a *single general inventive concept* where there is a *technical relationship among the inventions that involves at least one common or corresponding special technical feature*. The expression “special technical feature” is defined as meaning those technical features that define the contribution which each claimed invention, considered as a whole, makes over the prior art.

The pending claims of Species I-III have a technical relationship that involves at least one common or corresponding special technical feature as set forth in generic claims 1, 11-13, 15-17, 26-29 and 32.

Indeed, in view of the significant overlap of technical features between the claims of Species I-III, it is respectfully submitted that the Examiner will be required to search art not only related to Species I, but also to Species II and III as part of the analysis. Therefore, Applicant respectfully requests that all of the pending claims of Species I-III be examined at this time.

Applicants' election is made without prejudice and with traverse. As noted by the Examiner, upon the allowance of a generic claim, Applicants will be entitled to consideration of claims to not more than a reasonable number of species in addition to the elected species, provided that all claims to each additional species are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.146.

In view of the above, the presently pending claims are believed to be in condition for allowance. Accordingly, consideration and allowance are respectfully requested and the Examiner is respectfully requested to pass this application to issue. Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 18-0013, under Order No. 66967-0033 from which the undersigned is authorized to draw. To the extent necessary, a petition for extension of time under 37 C.F.R. 1.136(a) is hereby made, the fee for which should be charged against the aforementioned account.

Dated: March 25, 2009

Respectfully submitted,

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